

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
FINAL TRANSPORTATION ORDERS
Selected for Publication
February 2002

February 15, 2002

In re Application No. D-78932
of

VALENTINETTI, STEVE &
BRIAN HARTLEY, D/B/A
SEATTLE SUPER SHUTTLE,

For a Certificate of Public
Convenience and Necessity to
Operate Motor Vehicles in
Furnishing Passenger and
Express Service as an Auto
Transportation Company

DOCKET NO. TC-001566

ORDER DENYING APPLICATION

The Commission denies an application for authority to provide shuttle bus service between the Seattle-Tacoma International Airport (SeaTac) and points within the city of Seattle.

The date of service of an initial order upon the parties is the date that is determinative for the timing of post-order filings requirements. ¶11; *RCW 34.05.473(1)(c)*.

When a party tenders a pleading to, and it is accepted by, a delivery service, the party meets the service requirements applicable under rule and law. ¶12; *WAC 480-09-780(2)(a)*; *RCW 34.05.473(1)(c)*.

The Commission requires an applicant to have independent witnesses to testify on the issue of need. Conclusory testimony by an applicant that additional carriers are needed is normally not acceptable. ¶15; Order M.V.C. No. 2139, *In re Apple Blossom Lines, Inc.*, App. No. GA-78198 (Jan., 1996); Order M.V. C. No. 1969, *In re Fale*, App. No. D-75758 (1992).

Circumstances may arise when relevant testimony of an applicant or employee of an applicant as to factual matters that may bear on need for service may properly be considered. ¶17.

An individual witness remains competent to testify even if the witness has an acquaintance or friendship with one of the litigants. The Commission may weigh factors such as a friendship in determining witness credibility. ¶18

Evidence of need must relate to a period within a year of an application in order to have at least *prima facie* relevance to the application. ¶19.

The Commission may accept supporting testimony from travel agents if their businesses require transportation service for their clients and if the agents can testify as to their own business experiences and to their clients' experiences. This is the sort of information on which a reasonable person would rely in the conduct of his or her affairs. ¶21

Failure of service under circumstances of an ice storm is not an indication of need for additional service because at such times no carrier would be able to perform as required. ¶24

Inability to handle traffic on days whose peak loads far exceed normal levels, such as around the Thanksgiving and Christmas holidays, may constitute a showing of need for additional service. ¶25

A request to take official notice is not a substitute for a motion to reopen the record. Taking notice of an asserted drop in air travel following the attack on the World Trade Center on September 11, 2001 is not appropriate because the nature of the reduction

in air travel, its timing, the extent of its effect on airporter traffic and its consequences for a particular proceeding are matters requiring the presentation of evidence on which persons may disagree, and better suited to a motion to reopen rather than a request to take official notice. ¶32; *RCW 34.05.452(5)*, *WAC 480-09-750*.

A petitioner may use evidence of the same asserted service failures to support both a finding of need for an additional carrier and a finding that the existing carriers are not providing adequate service. Whether making such findings in a given case is appropriate is a mixed question of fact and law. ¶34-35; See, *Franklin County v. Sellers*, 97 Wn. 2d 317; 646 P. 2d 113 (1982).

The Commission has no authority to direct the Port of Seattle to take any action or to preempt the lawful jurisdiction of the Port of Seattle. Auto transportation authority to peruse the Seattle-Tacoma International Airport would not permit an applicant for Commission authority to enter the airport grounds without permission required to be issued by the Port. Concession authority resides only in the Port of Seattle. ¶38.

The Commission may still exclude from an applicant's proposed service area those portions of the area served by alternative but dissimilar service providers unless the applicant provides testimony supporting need for its specific service offering. ¶40; *In re San Juan Airlines*, Order M.V. No. 1909, App. No. D-2589 (1991).

The Commission considers an applicant fit and able to provide service as long as there is credible evidence that the applicant has the ability to operate lawfully and that it has sufficient financing to begin operations and continue them for a reasonable

period while its business is building. An applicant's interstate operations might constitute prima facie evidence of its financial ability. An applicant is not required to begin business with a fleet of hundreds of vehicles nor to demonstrate extensive experience in running a large business of the sort they seek to enter. ¶ 42-43.

February 26, 2002

WASHINGTON UTILITIES
AND TRANSPORTATION
COMMISSION

DOCKET NO. TO-011472

PREHEARING CONFERENCE ORDER

Complainant,

v.

OLYMPIC PIPE LINE
COMPANY

Respondent.

The magnitude of data requests in comparison with assertedly small overall dollar value of the proposed rates is not sufficient grounds to limit discovery in a rate proceeding involving novel issues, so long as the requests are not unduly burdensome. The number of data requests has no necessary relationship with need for information or the value of the proposed rate increase. ¶6.